BoardmanClark

Municipal Law Newsletter

VOLUME 30, ISSUE 2 MARCH/APRIL 2025

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Immigration Enforcement: An Overview for Municipal Governments

Local governments in Wisconsin, as well as across the country, are increasingly concerned about the possibility of immigration enforcement actions within their jurisdictions. Visits from immigration officials can create challenging situations for municipal governments, which must balance compliance with federal law, protection of community interests, and service to all residents regardless of immigration status.

There are three broad categories of immigration-related visits that could impact municipalities: Immigration and Customs Enforcement (ICE) raids; I-9 Investigations, and United States Citizenship and Immigration Status (USCIS) site visits.

ICE Raids

ICE raids are conducted to search places of employment to identify and potentially arrest individuals living or working in the U.S. without authorization or to immediately seize documents. This is the most intensive type of immigration enforcement visit and has the strictest documentation requirements. For an ICE raid, agents are required to provide a valid judicial warrant before entering non-public spaces without consent. A judicial warrant must be signed by a judge or magistrate from a state or federal court, not an official from Department of Homeland Security (DHS), ICE, or an Immigration Judge. Immigration agents may freely enter spaces that appear open to the public, but they require proper authorization for private areas unless someone gives consent or invites them inside.

ICE raids are conducted exclusively by ICE agents, not other immigration agencies. The judicial warrant will specify what areas agents may enter and search, and the actions the agents may take. Municipal officials have the right to object to agent actions that go beyond what is written in the warrant.

Form I-9 Inspections

Form I-9 inspections are focused on ensuring municipalities, as employers, have hired only individuals who are authorized to work in the United States. For these inspections, agents are required to serve a "Notice of Inspection" three days before arrival or provide a judicial subpoena or warrant on the day of arrival.

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These inspections may be conducted by agents from various federal agencies, including the Department of Labor, the Department of Justice, or DHS, including ICE.

The scope of these inspections is limited. Agents may only request employer Form I-9 records and may only enter the space necessary to view Form I-9 records, as provided by the Notice of Inspection, subpoena, or warrant. Municipalities can often avoid an in-person visit by delivering the requested documents within three days of receiving a Notice of Inspection.

USCIS Compliance Site Visits

Work visa compliance site visits are conducted to ensure that work visa holders employed by the municipality are following the requirements of their visa type, and the employment is consistent with the visa application. During these visits, agents may interview the employer and employee(s) and/or request documents related to the visa holder's employment.

Unlike other types of visits, agents conducting work visa compliance checks are not required to present any document to conduct the visit, which is frequently unannounced. USCIS maintains that employers consent to compliance visits when they sign work visa applications.

These visits may be conducted by agents from USCIS, DOL, or ICE. However, they only affect municipalities that sponsor certain work visa types, such as H-1B, L-1, and STEM OPT. Agents may only request information related to work visa compliance, not broader immigration enforcement activities.

Navigating Immigration Site Visits

In order to successfully navigate interactions with federal officials over immigration issues it is important to keep several principles in mind.

First, remember that municipalities have obligations to serve all residents regardless of immigration status. Having clear policies in place about what information is collected from residents using municipal services can help avoid creating unnecessary records that might later be subject to immigration enforcement requests.

Second, be aware that certain municipal facilities like schools, libraries, and community centers may qualify as "sensitive locations" where ICE enforcement actions are generally avoided, though not prohibited. Understanding this policy can help municipalities prepare appropriately for potential enforcement actions in different facilities.

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Property Tax Excessive Assessment Claims

Every year, property owners have the opportunity to challenge the property tax levied against their property. Many municipalities see regular challenges to property tax assessments, with some repeat challengers coming back year after year. Other municipalities may go some time without a local property owner making a challenge. In either case, when a challenge arises, it is important to be aware that Wisconsin lays out specific rules for how the challenger must bring property assessment claims. A misstep in following the prescribed process may provide for an opportunity to quickly dispose of a meritless challenge.

There are primarily two kinds of challenges that property owners may bring related to their property tax assessment: (1) a challenge that the property tax amounts to an unlawful tax because of an error made in the assessment, including challenges that the property is exempt from taxation, or (2) a challenge that the property tax assessment is excessive. These categories of challenges follow different statutory procedures, each with their own requirements and limitations. This article will focus on excessive assessment claims—claims that the assessor placed too high a value on the subject property.

A claim that an assessment is excessive must be brought in front of the Board of Review as specified in Wis. Stat. § 70.47. After the Board of Review process is complete, the challenger may either file a certiorari claim at the circuit court (which limits the court's review to the record made at the Board of Review) or bring a claim for excessive assessment under Wis. Stat. § 74.37. A claim under § 74.37 must be made in writing and served upon the clerk of the taxation district or the county. The taxation district or county then has 90 days to either allow or disallow the claim. If the claim is disallowed in whole or in part, the claimant has 90 days to file a claim at the circuit court.

Although many municipalities are well equipped to handle a challenge regarding an excessive assessment at the Board of Review stage, if either a certiorari claim or a Wis. Stat. § 74.37 claim is filed it is probably best to seek specialized legal advice. Be sure to check with your insurer as you may have coverage to defend against these suits.

When a court reviews a claim that an assessment is excessive, it affords the assessment a presumption

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US Supreme Court Imposes Limitations on "End Result" Provisions in NPDES Permits

On March 4, 2025, a divided U.S. Supreme Court (SCOTUS) held that the Clean Water Act (CWA) does not authorize the Environmental Protection Agency (EPA) to impose what it termed "end result" limitations in National Pollutant Discharge Elimination System (NPDES) permits. SCOTUS's decision in *City and County of San Francisco, California v. Environmental Protection Agency*, 604 U.S. ____, 145 S.Ct. 704 (2025) (*San Francisco)* could have a limited impact in Wisconsin.

The Wisconsin Department of Natural Resources (DNR) has delegated authority under the CWA to issue NPDES permits—called Wisconsin Pollutant Discharge Elimination System (WPDES) permits. These WPDES permits are issued pursuant to the CWA and implementing Wisconsin statutes and regulations. Since much of the state program is tied to the federal CWA, a SCOTUS clarification of the CWA can directly impact Wisconsin's implementation of its own statutes and regulations.

The CWA and NPDES Permit Program

Understanding how NPDES permits control discharges is crucial to understanding SCOTUS's holding. The NPDES permit program was created by the CWA to regulate point sources that discharge pollutants to surface waters. One example of a point source is the outfall of a wastewater treatment plant, like that at issue in *San Francisco*. EPA tailors an individual NPDES permit to a particular facility discharging into a particular water body and considers the type of facility activity, nature of discharge, and receiving water quality.

Under the CWA, there are two types of "effluent limitations" included in an NPDES permit: technology-based effluent limitations (TBELs) and water quality-based effluent limitations (WQBELs). TBELs are standards for effluent quality based on available treatment technologies. WQBELs are set without regard to cost or technology availability and permit only those discharges that may be made without unduly impairing water quality in the receiving water.

In addition to TBELs and WQBELs, NPDES permits may include "any more stringent limitation." These non-effluent "other limitations" imposed by NPDES permits may include narrative limitations such as best management practices (BMPs) that aim to prevent or minimize the potential for the release of toxic pollutants or hazardous substances in significant amounts to surface waters.

NPDES permittees that do not comply with permit terms are subject to significant civil penalties and, potentially, even criminal penalties. However, permittees that comply with their NPDES permits are deemed in compliance with the CWA and are shielded from liability if a surface water becomes impacted. This is often referred to as the "permit shield" provision.

Case Background and Holding

In 2019, EPA issued a renewal NPDES permit to the City of San Francisco's combined wastewater and stormwater treatment facilities. The renewal permit included two new provisions. The first new provision prohibited any discharge "that contribute[s] to a violation of any applicable water quality standard" for receiving waters. The second prohibited the City from performing any treatment or making any discharge that "create[s] pollution, contamination, or nuisance" as defined in California law.

The City challenged these "end-result" provisions in the NPDES permit, arguing that they exceeded the EPA's statutory authority. The Ninth Circuit denied the city's petition for review, holding that the CWA authorized "EPA to impose 'any' limitations ensuring applicable water quality standards are satisfied in a receiving body of water."

A divided SCOTUS reversed, holding that while not all "limitations" under the CWA must qualify as effluent limitations, the authorization to impose "any more stringent limitations" does not extend to "end-result" provisions. At issue was what qualifies as a "limitation" under the CWA and NPDES permit program. SCOTUS determined that a limitation must tell a permittee "that it must do a certain specific thing[]." In other words, to be a limitation, a provision must set out actions that must be taken to achieve an objective (e.g., meeting water quality standards). Under the majority's interpretation, a "limitation" cannot leave it up to the permittee to identify the steps the permittee must take to ensure water quality standards are met in the receiving water.

The SCOTUS majority bolstered this interpretation by distinguishing the current CWA, which provides the "permit shield" to compliant permittees, from prior federal pollution control legislation, which held a discharger potentially liable if the quality of the water into which it discharged pollutants failed to meet water quality standards. The Court found that unless a permittee knew what actions it must take to comply

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US Supreme Court Imposes Limitations

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with its permit, the permit shield protections "would be eviscerated if the EPA could impose a permit provision making the permittee responsible for any drop in water quality below the accepted standard." *San Francisco* at 718. The Court found this result even more troubling where there are multiple dischargers (perhaps hundreds) into the same waterbody—and chose not to interpret the CWA differently for single-discharger cases, like *San Franciscos*, from these multiple-discharger scenarios.

While end-result limitations are prohibited, SCOTUS confirmed that the CWA continues to allow non-numerical (i.e. "narrative") form limitations, like BMPs and "operational requirements and prohibitions" in addition to numerical limitations (TBELs and WQBELs). The majority emphasized that "EPA possesses the expertise ... and the resources necessary to determine what a permittee should do," and issue permits without end-result provisions that meet with CWA's objectives of protecting water quality. *Id.* at 719.

Dissent

Justice Barrett, joined by Justices Sotomayor, Kagan, and Jackson, joined the portion of the decision confirming that non-numerical form limitations are allowed but otherwise dissented. The dissent found that there was nothing novel about a limitation imposing that a particular result must be achieved and then leaving it up to the permittee to figure out what it must do. As one example, the dissent cited to congressional spending "limitations" that require a branch of government to figure out how not to spend more than it is budgeted. Ultimately, the four justices would have held that "end-result" receiving water limitations qualify as "limitations" that are entirely consistent with the CWA provisions. Instead, the dissent argues that the result of the majority's holding will be more onerous permitting processes, more specialized terms in permits, and delays in issuing new permits.

Impact in Wisconsin

Wisconsin generally includes broad WQBELs, TBELs, and BMPs in its WPDES permits to ensure that water quality standards are met. Regulations require that, in issuing WPDES permit conditions to protect water quality, the combined impacts of multiple dischargers are considered in setting individual permit limitations. Wisconsin also includes certain provisions that are more stringent than the CWA, such as regulating phosphorous. These existing numerical and narrative limitations are not impacted by *San Francisco*.

However, DNR includes at least one standard permit condition in WPDES permits that may run afoul of the *San Francisco* holding. This "Surface Water Uses and Criteria" provision generally provides as follows:

> *In accordance with NR 102.04, Wis. Adm. Code, surface water uses and criteria are established to govern water management decisions. Practices attributable to municipal, industrial, commercial, domestic, agricultural, land development or other activities shall be controlled so that all surface waters including the mixing zone meet the following conditions at all times and under all flow and water level conditions:*
>
> *a. Substances that will cause objectionable deposits on the shore or in the bed of a body of water, shall not be present in such amounts as to interfere with public rights in waters of the state.*
>
> *b. Floating or submerged debris, oil, scum or other material shall not be present in such amounts as to interfere with public rights in waters of the state.*
>
> *c. Materials producing color, odor, taste or unsightliness shall not be present in such amounts as to interfere with public rights in waters of the state.*
>
> *d. Substances in concentrations or in combinations which are toxic or harmful to humans shall not be present in amounts found to be of public health significance, nor shall substances be present in amounts which are acutely harmful to animal, plant or aquatic life.*

While the underlying Wis. Admin. Code § NR 102.04(1) reasonably establishes a policy that discharges should be controlled to meet certain conditions at all times, it is likely that a reviewing court, citing to *San Francisco*, could find that the blanket inclusion of this language in a WPDES permit subjects a permittee to a disallowed "end-result" provision.

In the end, municipal dischargers may have to wait and see how *San Francisco* plays out in current and future Wisconsin WPDES permits—and if the dissent's prediction proves to be correct that "it will be more difficult and more time consuming" for the DNR to issues these permits.

— Jared W. Smith

Immigration Enforcement

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Third, develop clear policies regarding the role of local police in immigration enforcement. Municipalities should establish and communicate their stance on cooperation with ICE detainers and information sharing. These policies should be consistent with state and local laws regarding immigration enforcement cooperation.

Fourth, since municipal meetings are typically open to the public, be aware that immigration agents may attend these meetings. Ensure staff understand protocols for such situations, particularly regarding public comment periods and private sessions.

Finally, local governments should prepare in advance of these encounters with federal immigration officials by taking a few simple measures:

Establish physical boundaries within municipal facilities by marking all non-public areas as "PRIVATE" or "ENTRY PERMITTED BY APPOINTMENT ONLY" using visible signage. This practice will create a critical legal boundary that immigration enforcement must respect.

Designate authority by identifying specific individuals authorized to interact with ICE or other immigration agents. Whether it's your city manager, mayor, police chief, or a designated team, these designations should be communicated throughout your municipal departments in advance.

Maintain all I-9 forms current and properly completed. These forms should be stored separately from personnel files to facilitate easier access during an inspection while protecting other employee information.

Establish clear response protocols in place for all staff members. Different protocols should be established for employees not authorized to interact with immigration officials and for those designated as authorized representatives.

All of these measures can be developed and implemented with best practices that are ideally developed in consultation with your municipal attorney and an immigration attorney. Effective preparation for potential immigration enforcement visits requires attention to practical logistics, specific documentation practices and ongoing training efforts. These preparations can make the difference between a chaotic, potentially problematic encounter and a controlled, compliant response.

While every immigration enforcement situation is unique, preparation and proper response can significantly impact how the visit unfolds and how the agency treats the municipality following the visit. Understanding the different types of immigration enforcement visits, recognizing the documents that authorize them, and following appropriate protocols can help municipalities navigate these complex situations effectively.

— Jennifer C. Johnson

Property Tax Excessive Assesment Claims

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of correctness. This means that the challenging party has to clear a high bar to show that the assessment was incorrect. A challenger may do this by showing the assessor did not correctly apply the Wisconsin Property Tax Assessment Manual or other Wisconsin law or by presenting significant contrary evidence to the court.

The Wisconsin Property Tax Assessment Manual lays out the assessor's process, including the assessor's duty to value the best use of the subject property and details a best evidence rule which has become known as the "*Markarian* hierarchy." The *Markarian* hierarchy sets out three tiers of evidence an assessor may consider if available. Tier 1 is evidence of a recent arm's-length sale of the subject property. Tier 2 is evidence of recent arm's-length sales of reasonably comparable properties. And Tier 3 is any other evidence relevant to the value of the property, usually including information regarding the property's income potential or the cost to replace the property taking depreciation into consideration. Many challengers will improperly attempt to introduce Tier 3 evidence to counter the assessor's conclusions when the assessor relied on Tier 1 or Tier 2 evidence. Under the *Markarian* hierarchy, Tier 3 evidence should not be sufficient to overcome the presumption of correctness on an assessment correctly based on Tier 1 or Tier 2 evidence.

Although a challenger faces many hurdles in bringing an excessive assessment claim, such a claim can still be costly and time consuming for the municipality to defend. Experienced legal experts can help municipalities navigate this complicated process when it arises and provide early advice on when to fight and when to settle.

— Liz Leonard

BoardmanClark

1 S PINCKNEY ST SUITE 410 PO BOX 927
MADISON WI 53701-0927

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Municipal Law Newsletter

The Municipal Law Newsletter is published by Boardman & Clark LLP, Fourth Floor, One South Pinckney Street, Madison, Wisconsin 53701-0927, 608-257-9521. The Newsletter is distributed to our clients and to municipal members of our clients, the Municipal Electric Utilities of Wisconsin and the Municipal Environmental Group—Water Division.

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Anita T. Gallucci	608-283-1770	agallucci@boardmanclark.com
Brian P. Goodman	608-283-1722	bgoodman@boardmanclark.com
Eric B. Hagen	608-286-7255	ehagen@boardmanclark.com
Richard A. Heinemann	608-283-1706	rheinemann@boardmanclark.com
Paul A. Johnson	608-286-7210	pjohnson@boardmanclark.com
Lawrie J. Kobza	608-283-1788	lkobza@boardmanclark.com
Storm B. Larson	608-286-7207	slarson@boardmanclark.com
Elizabeth A. Leonard	608-283-7224	lleonard@boardmanclark.com
Julia K. Potter	608-283-1720	jpotter@boardmanclark.com
Aiyanah S. Simms	608-283-1733	asimms@boardmanclark.com
Jared W. Smith	608-286-7171	jsmith@boardmanclark.com